

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MIKE HARRIS and JEFF DUNSTAN,
individually and on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

COMSCORE, INC., a Delaware corporation,

Defendant.

Case No. 1:11-5807

Hon. James F. Holderman

Magistrate Judge Kim

PLAINTIFFS' MOTION TO FILE DOCUMENTS UNDER SEAL

Plaintiffs Mike Harris and Jeff Dunstan (“Plaintiffs”), pursuant to Local Rules 5.8 and 26.2, respectfully move the Court for an Order granting them leave to file certain documents under seal, either in whole or in part, in conjunction with Plaintiffs’ Memorandum in Support of their Supplemental Motion for Class Certification. In support of this Motion, Plaintiffs state as follows:

1. On January 15, 2013, concurrently with the filing of this Motion, Plaintiffs filed their Memorandum in Support of their Supplemental Motion for Class Certification (the “Memorandum”) and the Declaration of Jay Edelson in support of the Memorandum (the “Edelson Declaration”).

2. Attached to the Edelson Declaration, among other exhibits, are the following documents that Defendant comScore, Inc. (“comScore”) has marked “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” pursuant to the January 20, 2012 Protective Order entered by Magistrate Judge Kim in this case (the “Protective Order”) (Dkt. No. 72):

a. Exhibit A: Transcript excerpts from the Rule 30(b)(6) Deposition of comScore's Chief Technology Officer and Rule 30(b)(6) designee, Michael Brown;

b. Exhibit K: Transcript excerpts from the Deposition of comScore's Director of Software Engineering, Randall Lynn McCaskill;

c. Exhibit L: Transcript excerpts from the Deposition of comScore's Senior Vice President of Technology, Yvonne Bigbee;

d. Exhibit M: Portions of comScore's internal "Wiki" document relating to the coding and operation of its tracking software, produced at Bates Nos. CS0015923–24; and

e. Exhibit N: Transcript excerpts from the Deposition of comScore's Quality Assurance Manager, Michiko Avantika Chand.

(Balabanian Decl. at ¶¶ 2–3.)

3. The Protective Order prohibits either Party from publicly disclosing documents marked as "CONFIDENTIAL," "CONFIDENTIAL—ATTORNEYS' EYES ONLY," or "Highly Confidential—Source Code." (Dkt. No. 72, ¶¶ 7, 9.)

4. On January 15, 2013, Plaintiffs' counsel conferred with comScore's counsel regarding the confidentiality of the above documents, and provided, via email, the actual exhibits they planned to attach to the Edelson Declaration that included or otherwise referenced documents that had been marked as "CONFIDENTIAL—ATTORNEYS' EYES ONLY" by comScore in this case. (Balabanian Decl. at ¶ 3.)

5. In response, comScore's counsel informed Plaintiffs' counsel that only Exhibit M, described *supra*, ¶ 2(d), and comScore's Supplemental Response No. 7 to Plaintiff Harris's First Set of Interrogatories—which responds to Harris's request that comScore "IDENTIFY the total number of PANELISTS (broken down by year, and distinguishing, where applicable, between

PC PANELISTS and MAC PANELISTS)” and is included as a part of Exhibit B to the Edelson Declaration—“need to be filed under seal.” (Balabanian Decl. at ¶ 4.)

6. Accordingly, and pursuant to comScore’s counsel’s instruction and the Protective Order entered in this case, Plaintiffs seek leave to file Exhibit M, described *supra*, ¶ 2(d), entirely under seal and Exhibit B, described *supra*, ¶ 5, partially under seal.

7. Additionally, because Plaintiffs—after conferring with comScore’s counsel—included an additional page from the Brown Deposition Transcript in Exhibit A (which, like the others, is marked CONFIDENTIAL—ATTORNEYS’ EYES ONLY), Plaintiffs seek leave to file Exhibit A, described *supra*, ¶ 2(a), partially under seal. (Balabanian Decl. at ¶ 6.)

8. Finally, because the Edelson Declaration discusses—in limited detail—the contents of Exhibit M and because the Memorandum references the contents of comScore’s Supplemental Response No. 7 to Plaintiff Harris’s First Set of Interrogatories, Plaintiffs seek leave to file the Edelson Declaration and Memorandum partially under seal as well.

WHEREFORE, Plaintiffs respectfully move the Court, pursuant to Local Rules 5.8 and 26.2 for an Order:

- (i) Granting them leave to file partially under seal (1) the Declaration of Jay Edelson submitted in support of Plaintiffs’ Supplemental Motion for Class Certification, (2) Plaintiffs’ Memorandum in Support of Plaintiffs’ Supplement Motion for Class Certification, and (3) Exhibits A and B to the Edelson Declaration, also submitted in support of Plaintiffs’ Motion for Class Certification;
- (ii) Granting them leave to file entirely under seal Exhibit M to the Declaration of Jay Edelson submitted in support of Plaintiffs’ Motion for Class Certification; and
- (iii) Awarding such other and further relief as the Court deems equitable and just.

Dated: January 15, 2013

Respectfully submitted,

MIKE HARRIS AND JEFF DUNSTAN,
INDIVIDUALLY AND ON BEHALF OF A CLASS OF
SIMILARLY SITUATED INDIVIDUALS,

By: /s/ Rafey S. Balabanian
One of Plaintiffs' Attorneys

Jay Edelson
Rafey S. Balabanian
Ari J. Scharg
Chandler R. Givens
Benjamin S. Thomassen
EDELSON MCGUIRE, LLC
350 North LaSalle, Suite 1300
Chicago, Illinois 60654
Telephone: (312) 589-6370
jedelson@edelson.com
rbalabanian@edelson.com
ascharg@edelson.com
cgivens@edelson.com
bthomassen@edelson.com

CERTIFICATE OF SERVICE

I, Rafey S. Balabanian, an attorney, certify that on January 15, 2013, I served the above and foregoing ***Plaintiffs' Motion to File Documents Under Seal***, by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system, and further by causing true and accurate copies of such paper to be transmitted to all counsel of record via electronic mail, all on this 15th day of January 2013.

/s/ Rafey S. Balabanian